

INDEPENDENT REVIEW PANEL

In the matter of:

Norba Nettoyage Ltee

(Applicant)

v/s

The City Council of Port Louis

(Respondent)

(Cause No. 24/15/IRP)

Decision

A. History of the case

The City Council of Port-Louis launched a tender on 09 July 2015 to prospective bidders for the Procurement of Services for Street Cleaning, Refuse Collection and Disposal including Carting Away of Post Cyclonic Waste for period 01 December 2015 to 30 November 2018. Bids were received on 19 August 2015 and opened on the same day. In total four bids were received. After notification of the award by the City Council of Port-Louis, the Applicant submitted a request for review to the Independent Review Panel on 06 October 2015.

B. Evaluation

The bids have been evaluated by the Tender Commission Committee on 09 September 2015 and composed of the following members:

- (i) **Chairman** Mrs Dalida Allagapen
- (ii) **Member** Mr Irayah Erigadoo
- (iii) **Member** Mr Michael René
- (iv) **Member** Mr Harrish Ramphul

Subsequently the Bid Evaluation Committee submitted its report on the 17 June 2015 and concluded the following:

“BEC concludes that Maxiclean Co. Ltd is the lowest responsive bidder and recommends that the contracts for lots 1, 2 and 4 be awarded to Maxiclean Co. Ltd at the bid price of Rs44,505,000, Rs5,652,135 and Rs29,052,105 respectively.”

C. Notification of award

The Municipal City Council of Port Louis through a letter dated 25 September 2015, informed the Applicant of the particulars of the successful bidder as follows:

Item	Bidder	Address	Amount (Rs)
Lot 1 – Commercial Area – North Zone	Maxiclean Co. Ltd	Grande Rosalie, D’Epinay	44,505,000
Lot 2 – Gabriel Martial fair including Housing Estates			5,652,135
Lot 4 – CHA Housing Estates and surroundings			29,052,105

D. The Challenge

On 28 September 2015, the Applicant challenged the award on the following grounds:

“The award of the Lot No. 4 – MCPL ex CHA Housing Estates to the preferred bidder (which is Rs6,696,105 higher) is in violation with the functions of the Bid Evaluation Committee which has a fundamental objective in the determination of the lowest evaluated substantial responsive bid as stipulated in s4(5) of the Public Procurement Act 2006.

In the public interest and in particular for the optimal and efficient use of tax – payers’ money, the Tender for Lot No. 4 – MCPL ex CHA Housing Estates ought to have been awarded to Norba Nettoyage Ltee.”

E. The Reply to Challenge

On 30 September 2015, the City Council of Port Louis made the following reply to the challenge:

“I wish to inform you under Section 48(14) of the Public Procurement Regulations 2008 as follows:

(a) ITB 6.5(e) of the Bidding Data Sheet spelt out that:

“The successful bidder should have secured a credit facility or liquid asset net of other contractual commitments, in the form of a Bank Certificate, for at least the amount as indicated for the lot(s) in Section VI to be qualified for award of contract as per the format annexed i.e:

*Rs3.5M for Lot 1
Rs700,000 for Lot 2 and
Rs2.5M for Lot 4*

The bidder should use the format of the Bank Certificate in Section IV – Bidding Forms at Page 48.”

The Bank Certificate shall be in the format annexed to Directive No. 24 dated 01 July 2015 issued by the Procurement Policy Office, a copy of which was included in the Bidding Documents. Instead you have submitted a testimonial.

The Directive No. 24 clearly stipulates that:

“Public bodies should reject Bank Certificate submitted by bidders that are not substantially similar to the format provided. Bank certificates that contain terms such as “Testimonial” instead of “Certificate” and/or omission of the words “net of other contractual commitments” should be rejected. Non-responsive Bank Certificate leads to the rejection of a bid”.

- (b) *Moreover, your company has failed to submit the following mandatory information:*
- *Volumetric capacity of vehicles as required in Table 2 of Section VI – Scope of Services and Performance Specifications.*
 - *The actual posting of equipment and tools for both lots 2 and 4 as required in Table 2(b) of Section IV, thus not responding to ITB 6.3(d).*

In the light of the above, the bid of your company is non-responsive and subsequently it has not been retained for award.”

F. Grounds for Review

On 06 October 2015, the Applicant seized the Independent Review Panel for review on the following grounds:

1. *The City Council of Port Louis (hereinafter referred to as the public body) was wrong in finding above Applicant non-responsive for the reasons stipulated in the written decision of the public body through its Letter with Reference ADM15/1138 and dated 30 September 2015.*
2. *The Public body refers to Directive No. 24 of the Public Procurement Office in Section (a) of the said written decision and highlights the use of “Testimonial” instead of “Certificate” by the Applicant. The Public Body was wrong for the following main reasons:*
 - *Directive No. 24 issued by the Public Procurement Office on 01 July 2015 becomes effective and thus applies to relevant bidding documents issued as from 15 July 2015.*
 - *The present bidding documents for Contract Reference Number CPB/12/2015 was issued on 09 July 2015; 6 days before the effective date of Directive No. 24. Thus Directive No. 24 is not relevant to the bidding documents CPB/12/2015.*
 - *Notwithstanding the above, the bank certificate submitted by the applicant is “substantially similar” to the bank certificate in section IV – Bidding Forms at page 48.*

3. *The Public Body refers in section (b) of the said written decision about mandatory information namely volumetric capacity of vehicles and actual posting of equipment and tools. The Public Body was wrong for the following main reasons:*
- *Applicant has provided the Capacity of the Vehicles to be deployed in Kgs as stipulated in Registration Book of the National Transport Authority (NTA) in Table 2 of section IV – List of Vehicles to be mobilized by the Bidder.*
 - *The equipment and tools in Table 2(b) of Section IV are mostly idle and will be deployed by Applicant while implementing the contract CPB/12/15.*
 - *Notwithstanding the above, the said information are not mandatory as per Directive No. 3 of the Public Procurement Office and could have easily been supplied to the Public Body upon a request for further or additional information.”*

G. The Hearing

Hearings were held on 19 October, 29 October and 03 November 2015. Written submissions were made on 27 October 2015 from successful bidder

The Applicant was represented by Mr G. Mooneesawmy, Counsel whereas the Respondent was represented by Ms K. Teck Yong together with Mr R. Bhoohun, Counsel.

H. Findings

Applicant’s Counsel submitted on two main issues. The central issue of the Applicant was in relation to Directive number 24. It is a fact that the Respondent made it clear to all bidders that Bank Certificates should be in format as annexed to Directive number 24. Furthermore, Directive number 24 clearly stipulates that *“Public Bodies should reject Bank Certificates submitted that are not substantially similar to the format provided. Bank certificates that contained terms such as ‘Testimonial’ instead of ‘Certificate’ and/or omission of the word ‘net of other*

contractual commitments’ should be rejected. Non responsive Bank Certificates leads to rejection of the bid.”

For the Panel, the Bank Testimonial submitted by the Applicant represents an absolute non-compliance set out in Directive number 24.

Counsel of the Applicant also submitted to the fact that the Directive number 24 was issued by the Public Procurement Office on the 1 July 2015 and that the said Directive applies to the relevant bidding documents issued as from 15 July 2015. As matters stand, it is a fact that bidding documents were issued on the 9 July 2015, that is, 6 days before the effective date of Directive number 24. Counsel for the Applicant thus submitted that Directive number 24 is not relevant to the bidding documents.

The panel found that the argument canvassed on the relevancy of the Directive 24 of the Public Procurement Office was just a mere safeguard and have to be complied with. It is agreeable that there is for instance an issue of Dates which was lawfully effective as from the 15 July 2015. If there was no such requirement from the bidders to submit a Bank Statement which does not affect those bidders, entering a bidding exercise prior to the abovementioned date, then it is obvious that neither a Bank statement nor any similar kind of “Testimonial” should have been included in the Bidding Document of the Applicant. The mere fact that the Applicant included and relied on such document, whatever be the format, is null and void, for any Bidding exercise prior to the effective date of 15 July 2015. Therefore, the issue of Directive 24 is apparently not admissible for the Applicant , in as much as on one hand he is challenging the effective date of the Directive 24 and on the other hand he is also claiming that the Document submitted is **“Substantially similar”** to the Bank statement in section (iv).

On the second issue, the Applicant submitted that he has provided the capacity of vehicles to be deployed in Kgs as per the registration book of the National Transport Authority and in relation to equipment and tool as per Table 2(b) of Section(IV) are mostly idle and will be deployed by the Applicant while implementing the contract. Further the Applicant submitted that the information are not mandatory and that the Public Procurement Office would have easily been supplied to the Public Body upon a request for further additional information.

Table 2 of Section (IV) refers to volumetric capacity of vehicles whereas 2(b) of the same Section refers to the actual posting of equipment and tool for lots 2 and 4. The Panel is of the view that firstly, the Applicant has failed to provide those mandatory information in as much as volumetric capacity of vehicles were required; not in Kgs as submitted by the Applicant. Secondly, the actual posting of equipment and tool for lots 2 and 4 as per Table 2(b) should have been posted.

Decision

From the arguments of both parties, the Panel finds and concludes that there is no solid evidence against the Public Body and thus order a no merit in the present application.

(A. Kallee)
Vice-Chairperson

(R. Ragnuth)
Member

(R. Rajanah)
Member

Dated 22 December 2015